

SENATE BILL NO. 1265

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute--Senator Saslaw)

A BILL to amend and reenact §§ 56-585.1, 56-585.1:4, and 56-599 of the Code of Virginia, relating to Virginia Electric Regulation Act; review proceedings; rates; return on common equity; rate adjustment clauses; capitalization ratio for certain projects; generation facility retirements subject to approval.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-585.1, 56-585.1:4, and 56-599 of the Code of Virginia are amended and reenacted as follows:

§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or expire.

A. During the first six months of 2009, the Commission shall, after notice and opportunity for hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and transmission services of each investor-owned incumbent electric utility. Such proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified herein. In such proceedings the Commission shall determine fair rates of return on common equity applicable to the generation and distribution services of the utility. In so doing, the Commission may use any methodology to determine such return it finds consistent with the public interest, but such return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility, nor shall the Commission set such return more than 300 basis points higher than such average. The peer group of the utility shall be determined in the manner prescribed in

27 subdivision 2 b. The Commission may increase or decrease such combined rate of return by up to 100
28 basis points based on the generating plant performance, customer service, and operating efficiency of a
29 utility, as compared to nationally recognized standards determined by the Commission to be appropriate
30 for such purposes. In such a proceeding, the Commission shall determine the rates that the utility may
31 charge until such rates are adjusted. If the Commission finds that the utility's combined rate of return on
32 common equity is more than 50 basis points below the combined rate of return as so determined, it shall
33 be authorized to order increases to the utility's rates necessary to provide the opportunity to fully recover
34 the costs of providing the utility's services and to earn not less than such combined rate of return. If the
35 Commission finds that the utility's combined rate of return on common equity is more than 50 basis points
36 above the combined rate of return as so determined, it shall be authorized either (i) to order reductions to
37 the utility's rates it finds appropriate, provided that the Commission may not order such rate reduction
38 unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs
39 of providing its services and to earn not less than the fair rates of return on common equity applicable to
40 the generation and distribution services; or (ii) to direct that 60 percent of the amount of the utility's
41 earnings that were more than 50 basis points above the fair combined rate of return for calendar year 2008
42 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12
43 months, as determined at the discretion of the Commission, following the effective date of the
44 Commission's order and be allocated among customer classes such that the relationship between the
45 specific customer class rates of return to the overall target rate of return will have the same relationship as
46 the last approved allocation of revenues used to design base rates. Commencing in 2011, the Commission,
47 after notice and opportunity for hearing, shall conduct reviews of the rates, terms and conditions for the
48 provision of generation, distribution and transmission services by each investor-owned incumbent electric
49 utility, subject to the following provisions:

- 50 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,
51 and such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of § 56-
52 585.1:1, the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three successive
53 12-month test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter, reviews for

54 a Phase I Utility will be on a triennial basis with subsequent proceedings utilizing the three successive 12-
55 month test periods ending December 31 immediately preceding the year in which such review proceeding
56 is conducted. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase
57 II Utility in 2021, utilizing the four successive 12-month test periods beginning January 1, 2017, and
58 ending December 31, 2020, with subsequent reviews on a ~~triennial~~ biennial basis commencing in 2023,
59 with such proceedings utilizing the ~~three~~ two successive 12-month test periods ending December 31
60 immediately preceding the year in which such review proceeding is conducted. ~~All such reviews occurring~~
61 ~~after December 31, 2017, shall be referred to as triennial reviews.~~ For purposes of this section, a Phase I
62 Utility is an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate
63 case settlement adopted by the Commission that extended in its application beyond January 1, 2002, and
64 a Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

65 2. Subject to the provisions of subdivision 6, the fair rate of return on common equity applicable
66 separately to the generation and distribution services of such utility, and for the two such services
67 combined, and for any rate adjustment clauses approved under subdivision 5 or 6, shall be determined by
68 the Commission during each such ~~triennial~~ review, as follows:

69 a. ~~The~~ For a Phase I Utility, the Commission may use any methodology to determine such return
70 it finds consistent with the public interest, but for applications received by the Commission on or after
71 January 1, 2020, such return shall not be set lower than the average of either (i) the returns on common
72 equity reported to the Securities and Exchange Commission for the three most recent annual periods for
73 which such data are available by not less than a majority, selected by the Commission as specified in
74 subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such
75 triennial review or (ii) the authorized returns on common equity that are set by the applicable regulatory
76 commissions for the same selected peer group, nor shall the Commission set such return more than 150
77 basis points higher than such average.

78 For a Phase II Utility, the Commission may use any methodology to determine such return it finds
79 consistent with the public interest, but for applications received by the Commission on or after July 1,
80 2023, such return shall not be set lower than the average of the most recently authorized returns on

81 common equity set by the applicable regulatory commissions for all investor-owned electric utilities in
82 the peer group of the utility subject to such review, nor shall the Commission set such return more than
83 150 basis points higher than such average. In the case of a peer utility having an authorized weighted cost
84 of equity, an authorized return on equity shall be imputed utilizing the utility's actual capital structure as
85 most recently reported to the Securities and Exchange Commission. In the case of a peer utility having an
86 authorized return on equity or weighted cost of equity range or band, the mid-point of the range or band
87 shall be utilized.

88 b. ~~In~~ For a Phase I Utility, in selecting such majority of peer group investor-owned electric utilities
89 for applications received by the Commission on or after January 1, 2020, the Commission shall first
90 remove from such group the two utilities within such group that have the lowest reported or authorized,
91 as applicable, returns of the group, as well as the two utilities within such group that have the highest
92 reported or authorized, as applicable, returns of the group, and the Commission shall then select a majority
93 of the utilities remaining in such peer group. In its final order regarding such triennial review, the
94 Commission shall identify the utilities in such peer group it selected for the calculation of such limitation.
95 ~~For~~ With respect to both Phase I and Phase II Utilities, for purposes of this subdivision 2, an investor-
96 owned electric utility shall be deemed part of such peer group if (i) its principal operations are conducted
97 in the southeastern United States east of the Mississippi River in either the states of West Virginia or
98 Kentucky or in those states south of Virginia, excluding the state of Tennessee, (ii) it is a vertically-
99 integrated electric utility providing generation, transmission, and distribution services whose facilities and
100 operations are subject to state public utility regulation in the state where its principal operations are
101 conducted, (iii) it had a long-term bond rating assigned by Moody's Investors Service of at least Baa at
102 the end of the most recent test period subject to such ~~triennial~~ review, and (iv) it is not an affiliate of the
103 utility subject to such ~~triennial~~ review or a utility whose fair rate of return on common equity is determined
104 by the Commission. Additionally, for reviews filed by a Phase II Utility, an investor-owned electric utility
105 shall be deemed part of such peer group only if meets the requirements in this subdivision and is a
106 vertically-integrated electric utility providing generation, transmission, and distribution services to at least
107 200,000 retail electric customers.

108 c. The Commission may, consistent with its precedent for incumbent electric utilities prior to the
109 enactment of Chapters 888 and 933 of the Acts of Assembly of 2007, increase or decrease the utility's
110 combined rate of return based on the Commission's consideration of the utility's performance.

111 d. In any Current Proceeding, the Commission shall determine whether the Current Return has
112 increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a
113 percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-
114 U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the
115 date on which the Commission determined the Initial Return. If so, the Commission may conduct an
116 additional analysis of whether it is in the public interest to utilize such Current Return for the Current
117 Proceeding then pending. A finding of whether the Current Return justifies such additional analysis shall
118 be made without regard to any enhanced rate of return on common equity awarded pursuant to the
119 provisions of subdivision 6. Such additional analysis shall include, but not be limited to, a consideration
120 of overall economic conditions, the level of interest rates and cost of capital with respect to business and
121 industry, in general, as well as electric utilities, the current level of inflation and the utility's cost of goods
122 and services, the effect on the utility's ability to provide adequate service and to attract capital if less than
123 the Current Return were utilized for the Current Proceeding then pending, and such other factors as the
124 Commission may deem relevant. If, as a result of such analysis, the Commission finds that use of the
125 Current Return for the Current Proceeding then pending would not be in the public interest, then the lower
126 limit imposed by subdivision 2 a on the return to be determined by the Commission for such utility shall
127 be calculated, for that Current Proceeding only, by increasing the Initial Return by a percentage at least
128 equal to the increase, expressed as a percentage, in the United States Average Consumer Price Index for
129 all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States
130 Department of Labor, since the date on which the Commission determined the Initial Return. For purposes
131 of this subdivision:

132 "Current Proceeding" means any proceeding conducted under any provisions of this subsection
133 that require or authorize the Commission to determine a fair combined rate of return on common equity

134 for a utility and that will be concluded after the date on which the Commission determined the Initial
135 Return for such utility.

136 "Current Return" means the minimum fair combined rate of return on common equity required for
137 any Current Proceeding by the limitation regarding a utility's peer group specified in subdivision 2 a.

138 "Initial Return" means the fair combined rate of return on common equity determined for such
139 utility by the Commission on the first occasion after July 1, 2009, under any provision of this subsection
140 pursuant to the provisions of subdivision 2 a.

141 e. In addition to other considerations, in setting the return on equity within the range allowed by
142 this section, the Commission shall strive to maintain costs of retail electric energy that are cost competitive
143 with costs of retail electric energy provided by the other peer group investor-owned electric utilities.

144 f. The determination of such returns shall be made by the Commission on a stand-alone basis, and
145 specifically without regard to any return on common equity or other matters determined with regard to
146 facilities described in subdivision 6.

147 g. If the combined rate of return on common equity earned by the generation and distribution
148 services is no more than 50 basis points above or below the return as so determined or, for any test period
149 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I
150 Utility, such return is no more than 70 basis points above or below the return as so determined, such
151 combined return shall not be considered either excessive or insufficient, respectively. However, for any
152 test period commencing after December 31, 2012, for a Phase II Utility, and after December 31, 2013, for
153 a Phase I Utility, if the utility has, during the test period or periods under review, earned below the return
154 as so determined, whether or not such combined return is within 70 basis points of the return as so
155 determined, the utility may petition the Commission for approval of an increase in rates in accordance
156 with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a fair combined
157 rate of return, and such proceeding shall otherwise be conducted in accordance with the provisions of this
158 section. The provisions of this subdivision are subject to the provisions of subdivision 8.

159 h. Any amount of a utility's earnings directed by the Commission to be credited to customers' bills
160 pursuant to this section shall not be considered for the purpose of determining the utility's earnings in any
161 subsequent ~~triennial~~ review.

162 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings
163 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021,
164 ~~consisting of the schedules contained in the Commission's rules governing utility rate increase applications~~
165 and terminating thereafter. Such filing shall encompass the three successive 12-month test periods ending
166 December 31 immediately preceding the year in which such proceeding is conducted, except that the filing
167 for a Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending December
168 31, 2020. After 2021, each Phase II Utility shall make a biennial filing by March 31 of every second year,
169 except that the 2023 filing for a Phase II Utility shall be made on or after July 1, 2023. All biennial filings
170 shall encompass the two successive 12-month test periods ending December 31 immediately preceding
171 the year in which such review proceeding is conducted. All such filings shall consist of the schedules
172 contained in the Commission's rules governing utility rate increase applications, and in every such case
173 the filing for each year shall be identified separately and shall be segregated from any other year
174 encompassed by the filing. In a filing under this subdivision that does not result in an overall rate change,
175 a utility may propose an adjustment to one or more tariffs that are revenue neutral to the utility.

176 If the Commission determines that rates should be revised or credits be applied to customers' bills
177 pursuant to subdivision 8 or ~~9~~ 10, any rate adjustment clauses previously implemented related to facilities
178 utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's
179 costs, revenues and investments until the amounts that are the subject of such rate adjustment clauses are
180 fully recovered. The Commission shall combine such clauses with the utility's costs, revenues and
181 investments only after it makes its initial determination with regard to necessary rate revisions or credits
182 to customers' bills, and the amounts thereof, but after such clauses are combined as ~~herein~~ specified in this
183 paragraph, they shall thereafter be considered part of the utility's costs, revenues, and investments for the
184 purposes of future ~~triennial~~ review proceedings. ~~In a triennial filing under this subdivision that does not~~

185 ~~result in an overall rate change a utility may propose an adjustment to one or more tariffs that are revenue~~
186 ~~neutral to the utility.~~

187 As of July 1, 2023, a Phase II Utility, shall select a subset of rate adjustment clauses previously
188 implemented pursuant to subdivision 5 or 6 having a combined annual revenue requirement, as of July 1,
189 2023, of at least \$300 million and combine such rate adjustment clauses with the utility's costs, revenues,
190 and investments for generation and distribution services. After such rate adjustment clauses are combined
191 as specified in this paragraph, such rate adjustment clauses shall be considered part of the utility's costs,
192 revenues, and investments for the purposes of future biennial review proceedings, and the combination of
193 such rate adjustment clauses shall be specifically subject to audit by the Commission in the utility's 2023
194 biennial review filing.

195 4. (Expires December 31, 2023) The following costs incurred by the utility shall be deemed
196 reasonable and prudent: (i) costs for transmission services provided to the utility by the regional
197 transmission entity of which the utility is a member, as determined under applicable rates, terms and
198 conditions approved by the Federal Energy Regulatory Commission; (ii) costs charged to the utility that
199 are associated with demand response programs approved by the Federal Energy Regulatory Commission
200 and administered by the regional transmission entity of which the utility is a member; and (iii) costs
201 incurred by the utility to construct, operate, and maintain transmission lines and substations installed in
202 order to provide service to a business park. Upon petition of a utility at any time after the expiration or
203 termination of capped rates, but not more than once in any 12-month period, the Commission shall approve
204 a rate adjustment clause under which such costs, including, without limitation, costs for transmission
205 service; charges for new and existing transmission facilities, including costs incurred by the utility to
206 construct, operate, and maintain transmission lines and substations installed in order to provide service to
207 a business park; administrative charges; and ancillary service charges designed to recover transmission
208 costs, shall be recovered on a timely and current basis from customers. Retail rates to recover these costs
209 shall be designed using the appropriate billing determinants in the retail rate schedules.

210 4. (Effective January 1, 2024) The following costs incurred by the utility shall be deemed
211 reasonable and prudent: (i) costs for transmission services provided to the utility by the regional

212 transmission entity of which the utility is a member, as determined under applicable rates, terms and
213 conditions approved by the Federal Energy Regulatory Commission, and (ii) costs charged to the utility
214 that are associated with demand response programs approved by the Federal Energy Regulatory
215 Commission and administered by the regional transmission entity of which the utility is a member. Upon
216 petition of a utility at any time after the expiration or termination of capped rates, but not more than once
217 in any 12-month period, the Commission shall approve a rate adjustment clause under which such costs,
218 including, without limitation, costs for transmission service, charges for new and existing transmission
219 facilities, administrative charges, and ancillary service charges designed to recover transmission costs,
220 shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall
221 be designed using the appropriate billing determinants in the retail rate schedules.

222 5. A utility may at any time, after the expiration or termination of capped rates, but not more than
223 once in any 12-month period, petition the Commission for approval of one or more rate adjustment clauses
224 for the timely and current recovery from customers of the following costs:

225 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
226 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring such
227 costs consistent with an order of the Commission entered under clause (vi) of subsection B of § 56-582.
228 The Commission shall approve such a petition allowing the recovery of such costs that comply with the
229 requirements of clause (vi) of subsection B of § 56-582;

230 b. Projected and actual costs for the utility to design and operate fair and effective peak-shaving
231 programs or pilot programs. The Commission shall approve such a petition if it finds that the program is
232 in the public interest, provided that the Commission shall allow the recovery of such costs as it finds are
233 reasonable;

234 c. Projected and actual costs for the utility to design, implement, and operate energy efficiency
235 programs or pilot programs. Any such petition shall include a proposed budget for the design,
236 implementation, and operation of the energy efficiency program, including anticipated savings from and
237 spending on each program, and the Commission shall grant a final order on such petitions within eight
238 months of initial filing. The Commission shall only approve such a petition if it finds that the program is

239 in the public interest. If the Commission determines that an energy efficiency program or portfolio of
240 programs is not in the public interest, its final order shall include all work product and analysis conducted
241 by the Commission's staff in relation to that program that has bearing upon the Commission's
242 determination. Such order shall adhere to existing protocols for extraordinarily sensitive information.

243 Energy efficiency pilot programs are in the public interest provided that the pilot program is (i) of
244 limited scope, cost, and duration and (ii) intended to determine whether a new or substantially revised
245 program would be cost-effective.

246 Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses
247 for energy efficiency programs and pilot programs, which margin shall be equal to the general rate of
248 return on common equity determined as described in subdivision 2. Beginning January 1, 2022, and
249 thereafter, if the Commission determines that the utility meets in any year the annual energy efficiency
250 standards set forth in § 56-596.2, in the following year, the Commission shall award a margin on energy
251 efficiency program operating expenses in that year, to be recovered through a rate adjustment clause,
252 which margin shall be equal to the general rate of return on common equity determined as described in
253 subdivision 2. If the Commission does not approve energy efficiency programs that, in the aggregate, can
254 achieve the annual energy efficiency standards, the Commission shall award a margin on energy efficiency
255 operating expenses in that year for any programs the Commission has approved, to be recovered through
256 a rate adjustment clause under this subdivision, which margin shall equal the general rate of return on
257 common equity determined as described in subdivision 2. Any margin awarded pursuant to this
258 subdivision shall be applied as part of the utility's next rate adjustment clause true-up proceeding. The
259 Commission shall also award an additional 20 basis points for each additional incremental 0.1 percent in
260 annual savings in any year achieved by the utility's energy efficiency programs approved by the
261 Commission pursuant to this subdivision, beyond the annual requirements set forth in § 56-596.2, provided
262 that the total performance incentive awarded in any year shall not exceed 10 percent of that utility's total
263 energy efficiency program spending in that same year.

264 The Commission shall annually monitor and report to the General Assembly the performance of
265 all programs approved pursuant to this subdivision, including each utility's compliance with the total

266 annual savings required by § 56-596.2, as well as the annual and lifecycle net and gross energy and
267 capacity savings, related emissions reductions, and other quantifiable benefits of each program; total
268 customer bill savings that the programs produce; utility spending on each program, including any
269 associated administrative costs; and each utility's avoided costs and cost-effectiveness results.

270 Notwithstanding any other provision of law, unless the Commission finds in its discretion and after
271 consideration of all in-state and regional transmission entity resources that there is a threat to the reliability
272 or security of electric service to the utility's customers, the Commission shall not approve construction of
273 any new utility-owned generating facilities that emit carbon dioxide as a by-product of combusting fuel
274 to generate electricity unless the utility has already met the energy savings goals identified in § 56-596.2
275 and the Commission finds that supply-side resources are more cost-effective than demand-side or energy
276 storage resources.

277 As used in this subdivision, "large general service customer" means a customer that has a verifiable
278 history of having used more than one megawatt of demand from a single site.

279 Large general service customers shall be exempt from requirements that they participate in energy
280 efficiency programs if the Commission finds that the large general service customer has, at the customer's
281 own expense, implemented energy efficiency programs that have produced or will produce measured and
282 verified results consistent with industry standards and other regulatory criteria stated in this section. The
283 Commission shall, no later than June 30, 2021, adopt rules or regulations (a) establishing the process for
284 large general service customers to apply for such an exemption, (b) establishing the administrative
285 procedures by which eligible customers will notify the utility, and (c) defining the standard criteria that
286 shall be satisfied by an applicant in order to notify the utility, including means of evaluation measurement
287 and verification and confidentiality requirements. At a minimum, such rules and regulations shall require
288 that each exempted large general service customer certify to the utility and Commission that its
289 implemented energy efficiency programs have delivered measured and verified savings within the prior
290 five years. In adopting such rules or regulations, the Commission shall also specify the timing as to when
291 a utility shall accept and act on such notice, taking into consideration the utility's integrated resource
292 planning process, as well as its administration of energy efficiency programs that are approved for cost

293 recovery by the Commission. Savings from large general service customers shall be accounted for in
294 utility reporting in the standards in § 56-596.2.

295 The notice of nonparticipation by a large general service customer shall be for the duration of the
296 service life of the customer's energy efficiency measures. The Commission may on its own motion initiate
297 steps necessary to verify such nonparticipant's achievement of energy efficiency if the Commission has a
298 body of evidence that the nonparticipant has knowingly misrepresented its energy efficiency achievement.

299 A utility shall not charge such large general service customer for the costs of installing energy
300 efficiency equipment beyond what is required to provide electric service and meter such service on the
301 customer's premises if the customer provides, at the customer's expense, equivalent energy efficiency
302 equipment. In all relevant proceedings pursuant to this section, the Commission shall take into
303 consideration the goals of economic development, energy efficiency and environmental protection in the
304 Commonwealth;

305 d. Projected and actual costs of compliance with renewable energy portfolio standard requirements
306 pursuant to § 56-585.5 that are not recoverable under subdivision 6. The Commission shall approve such
307 a petition allowing the recovery of such costs incurred as required by § 56-585.5, provided that the
308 Commission does not otherwise find such costs were unreasonably or imprudently incurred;

309 e. Projected and actual costs of projects that the Commission finds to be necessary to mitigate
310 impacts to marine life caused by construction of offshore wind generating facilities, as described in § 56-
311 585.1:11, or to comply with state or federal environmental laws or regulations applicable to generation
312 facilities used to serve the utility's native load obligations, including the costs of allowances purchased
313 through a market-based trading program for carbon dioxide emissions. The Commission shall approve
314 such a petition if it finds that such costs are necessary to comply with such environmental laws or
315 regulations;

316 f. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate
317 programs approved by the Commission that accelerate the vegetation management of distribution rights-
318 of-way. No costs shall be allocated to or recovered from customers that are served within the large general
319 service rate classes for a Phase II Utility or that are served at subtransmission or transmission voltage, or

320 take delivery at a substation served from subtransmission or transmission voltage, for a Phase I Utility;
321 and

322 g. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate
323 programs approved by the Commission to provide incentives to (i) low-income, elderly, and disabled
324 individuals or (ii) organizations providing residential services to low-income, elderly, and disabled
325 individuals for the installation of, or access to, equipment to generate electric energy derived from
326 sunlight, provided the low-income, elderly, and disabled individuals, or organizations providing
327 residential services to low-income, elderly, and disabled individuals, first participate in incentive programs
328 for the installation of measures that reduce heating or cooling costs.

329 Any rate adjustment clause approved under subdivision 5 c by the Commission shall remain in
330 effect until the utility exhausts the approved budget for the energy efficiency program. The Commission
331 shall have the authority to determine the duration or amortization period for any other rate adjustment
332 clause approved under this subdivision.

333 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet
334 the utility's projected native load obligations and to promote economic development, a utility may at any
335 time, after the expiration or termination of capped rates, petition the Commission for approval of a rate
336 adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-
337 fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the
338 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or
339 without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major
340 unit modifications of generation facilities, including the costs of any system or equipment upgrade, system
341 or equipment replacement, or other cost reasonably appropriate to extend the combined operating license
342 for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or more new
343 underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or
344 less located within the Commonwealth, (v) one or more pumped hydroelectricity generation and storage
345 facilities that utilize on-site or off-site renewable energy resources as all or a portion of their power source
346 and such facilities and associated resources are located in the coalfield region of the Commonwealth as

347 described in § 15.2-6002, regardless of whether such facility is located within or without the utility's
348 service territory, or (vi) one or more electric distribution grid transformation projects; however, subject to
349 the provisions of the following sentence, the utility shall not file a petition under clause (iv) more often
350 than annually and, in such petition, shall not seek any annual incremental increase in the level of
351 investments associated with such a petition that exceeds five percent of such utility's distribution rate base,
352 as such rate base was determined for the most recently ended 12-month test period in the utility's latest
353 review proceeding conducted pursuant to subdivision 3 and concluded by final order of the Commission
354 prior to the date of filing of such petition under clause (iv). In all proceedings regarding petitions filed
355 under clause (iv) or (vi), the level of investments approved for recovery in such proceedings shall be in
356 addition to, and not in lieu of, levels of investments previously approved for recovery in prior proceedings
357 under clause (iv) or (vi), as applicable. As of December 1, 2028, any costs recovered by a utility pursuant
358 to clause (iv) shall be limited to any remaining costs associated with conversions of overhead distribution
359 facilities to underground facilities that have been previously approved or are pending approval by the
360 Commission through a petition by the utility under this subdivision. Such a petition concerning facilities
361 described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and
362 will be built by a Phase I Utility, or facilities described in clause (i) may also be filed before the expiration
363 or termination of capped rates. A utility that constructs or makes modifications to any such facility, or
364 purchases any facility consisting of at least one megawatt of generating capacity using energy derived
365 from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or
366 in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as
367 accrued against income, through its rates, including projected construction work in progress, and any
368 associated allowance for funds used during construction, planning, development and construction or
369 acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new
370 underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake
371 such projects, an enhanced rate of return on common equity calculated as specified below; however, in
372 determining the amounts recoverable under a rate adjustment clause for new underground facilities, the
373 Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the

374 operation and maintenance costs attributable to either the overhead distribution facilities being replaced
375 or the new underground facilities or (b) any other costs attributable to the overhead distribution facilities
376 being replaced. Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof
377 shall remain eligible for recovery from customers through the utility's base rates for distribution service.
378 A utility filing a petition for approval to construct or purchase a facility consisting of at least one megawatt
379 of generating capacity using energy derived from sunlight and located in the Commonwealth and that
380 utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may propose
381 a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. A
382 utility seeking approval to construct or purchase a generating facility that emits carbon dioxide shall
383 demonstrate that it has already met the energy savings goals identified in § 56-596.2 and that the identified
384 need cannot be met more affordably through the deployment or utilization of demand-side resources or
385 energy storage resources and that it has considered and weighed alternative options, including third-party
386 market alternatives, in its selection process.

387 The costs of the facility, other than return on projected construction work in progress and
388 allowance for funds used during construction, shall not be recovered prior to the date a facility constructed
389 by the utility and described in clause (i), (ii), (iii), or (v) begins commercial operation, the date the utility
390 becomes the owner of a purchased generation facility consisting of at least one megawatt of generating
391 capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or
392 services sourced, in whole or in part, from one or more Virginia businesses, or the date new underground
393 facilities are classified by the utility as plant in service. In any application to construct a new generating
394 facility, the utility shall include, and the Commission shall consider, the social cost of carbon, as
395 determined by the Commission, as a benefit or cost, whichever is appropriate. The Commission shall
396 ensure that the development of new, or expansion of existing, energy resources or facilities does not have
397 a disproportionate adverse impact on historically economically disadvantaged communities. The
398 Commission may adopt any rules it deems necessary to determine the social cost of carbon and shall use
399 the best available science and technology, including the Technical Support Document: Technical Update
400 of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866, published by

401 the Interagency Working Group on Social Cost of Greenhouse Gases from the United States Government
402 in August 2016, as guidance. The Commission shall include a system to adjust the costs established in this
403 section with inflation.

404 Such enhanced rate of return on common equity shall be applied to allowance for funds used during
405 construction and to construction work in progress during the construction phase of the facility and shall
406 thereafter be applied to the entire facility during the first portion of the service life of the facility. The first
407 portion of the service life shall be as specified in the table below; however, the Commission shall
408 determine the duration of the first portion of the service life of any facility, within the range specified in
409 the table below, which determination shall be consistent with the public interest and shall reflect the
410 Commission's determinations regarding how critical the facility may be in meeting the energy needs of
411 the citizens of the Commonwealth and the risks involved in the development of the facility. After the first
412 portion of the service life of the facility is concluded, the utility's general rate of return shall be applied to
413 such facility for the remainder of its service life. As used herein, the service life of the facility shall be
414 deemed to begin on the date a facility constructed by the utility and described in clause (i), (ii), (iii), or (v)
415 begins commercial operation, the date the utility becomes the owner of a purchased generation facility
416 consisting of at least one megawatt of generating capacity using energy derived from sunlight and located
417 in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more
418 Virginia businesses, or the date new underground facilities or new electric distribution grid transformation
419 projects are classified by the utility as plant in service, and such service life shall be deemed equal in years
420 to the life of that facility as used to calculate the utility's depreciation expense. Such enhanced rate of
421 return on common equity shall be calculated by adding the basis points specified in the table below to the
422 utility's general rate of return, and such enhanced rate of return shall apply only to the facility that is the
423 subject of such rate adjustment clause. Allowance for funds used during construction shall be calculated
424 for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an
425 enhanced rate of return on common equity as determined pursuant to this subdivision, until such
426 construction work in progress is included in rates. The construction of any facility described in clause (i)
427 or (v) is in the public interest, and in determining whether to approve such facility, the Commission shall

428 liberally construe the provisions of this title. The construction or purchase by a utility of one or more
429 generation facilities with at least one megawatt of generating capacity, and with an aggregate rated
430 capacity that does not exceed 16,100 megawatts, including rooftop solar installations with a capacity of
431 not less than 50 kilowatts, and with an aggregate capacity of 100 megawatts, that use energy derived from
432 sunlight or from onshore wind and are located in the Commonwealth or off the Commonwealth's Atlantic
433 shoreline, regardless of whether any of such facilities are located within or without the utility's service
434 territory, is in the public interest, and in determining whether to approve such facility, the Commission
435 shall liberally construe the provisions of this title. A utility may enter into short-term or long-term power
436 purchase contracts for the power derived from sunlight generated by such generation facility prior to
437 purchasing the generation facility. The replacement of any subset of a utility's existing overhead
438 distribution tap lines that have, in the aggregate, an average of nine or more total unplanned outage events-
439 per-mile over a preceding 10-year period with new underground facilities in order to improve electric
440 service reliability is in the public interest. In determining whether to approve petitions for rate adjustment
441 clauses for such new underground facilities that meet this criteria, and in determining the level of costs to
442 be recovered thereunder, the Commission shall liberally construe the provisions of this title.

443 The conversion of any such facilities on or after September 1, 2016, is deemed to provide local
444 and system-wide benefits and to be cost beneficial, and the costs associated with such new underground
445 facilities are deemed to be reasonably and prudently incurred and, notwithstanding the provisions of
446 subsection C or D, shall be approved for recovery by the Commission pursuant to this subdivision,
447 provided that the total costs associated with the replacement of any subset of existing overhead distribution
448 tap lines proposed by the utility with new underground facilities, exclusive of financing costs, shall not
449 exceed an average cost per customer of \$20,000, with such customers, including those served directly by
450 or downline of the tap lines proposed for conversion, and, further, such total costs shall not exceed an
451 average cost per mile of tap lines converted, exclusive of financing costs, of \$750,000. A utility shall,
452 without regard for whether it has petitioned for any rate adjustment clause pursuant to clause (vi), petition
453 the Commission, not more than once annually, for approval of a plan for electric distribution grid
454 transformation projects. Any plan for electric distribution grid transformation projects shall include both

455 measures to facilitate integration of distributed energy resources and measures to enhance physical electric
 456 distribution grid reliability and security. In ruling upon such a petition, the Commission shall consider
 457 whether the utility's plan for such projects, and the projected costs associated therewith, are reasonable
 458 and prudent. Such petition shall be considered on a stand-alone basis without regard to the other costs,
 459 revenues, investments, or earnings of the utility; without regard to whether the costs associated with such
 460 projects will be recovered through a rate adjustment clause under this subdivision or through the utility's
 461 rates for generation and distribution services; and without regard to whether such costs will be the subject
 462 of a customer credit offset, as applicable, pursuant to subdivision 8 d. The Commission's final order
 463 regarding any such petition for approval of an electric distribution grid transformation plan shall be entered
 464 by the Commission not more than six months after the date of filing such petition. The Commission shall
 465 likewise enter its final order with respect to any petition by a utility for a certificate to construct and
 466 operate a generating facility or facilities utilizing energy derived from sunlight, pursuant to subsection D
 467 of § 56-580, within six months after the date of filing such petition. The basis points to be added to the
 468 utility's general rate of return to calculate the enhanced rate of return on common equity, and the first
 469 portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by
 470 type of facility, as specified in the following table:

a	Type of Generation Facility	Basis Points	First Portion of Service Life
b	Nuclear-powered	200	Between 12 and 25 years
c	Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
d	Renewable powered, other than landfill gas powered	200	Between 5 and 15 years
e	Coalbed methane gas powered	150	Between 5 and 15 years
f	Landfill gas powered	200	Between 5 and 15 years
g	Conventional coal or combined-cycle combustion turbine	100	Between 10 and 20 years

471 Only those facilities as to which a rate adjustment clause under this subdivision has been
472 previously approved by the Commission, or as to which a petition for approval of such rate adjustment
473 clause was filed with the Commission, on or before January 1, 2013, shall be entitled to the enhanced rate
474 of return on common equity as specified in the above table during the construction phase of the facility
475 and the approved first portion of its service life.

476 Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between
477 July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be
478 deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time
479 as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent
480 of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall
481 not be deferred for recovery through a rate adjustment clause under this subdivision; however, such
482 remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by
483 the Commission in the test periods under review in the utility's next review filed after July 1, 2014. Thirty
484 percent of all costs of a facility utilizing energy derived from offshore wind that the utility incurred
485 between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013,
486 may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at
487 such time as the Commission provides in an order approving such a rate adjustment clause. The remaining
488 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31,
489 2013, shall not be deferred for recovery through a rate adjustment clause under this subdivision; however,
490 such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined
491 by the Commission in the test periods under review in the utility's next review filed after July 1, 2014.

492 In connection with planning to meet forecasted demand for electric generation supply and assure
493 the adequate and sufficient reliability of service, consistent with § 56-598, planning and development
494 activities for a new utility-owned and utility-operated generating facility or facilities utilizing energy
495 derived from sunlight or from onshore or offshore wind are in the public interest.

496 Notwithstanding any provision of Chapter 296 of the Acts of Assembly of 2018, construction,
497 purchasing, or leasing activities for a new utility-owned and utility-operated generating facility or facilities

498 utilizing energy derived from sunlight or from onshore wind with an aggregate capacity of 16,100
499 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an
500 aggregate capacity of 100 megawatts, together with a utility-owned and utility-operated generating facility
501 or facilities utilizing energy derived from offshore wind with an aggregate capacity of not more than 3,000
502 megawatts, are in the public interest. Additionally, energy storage facilities with an aggregate capacity of
503 2,700 megawatts are in the public interest. To the extent that a utility elects to recover the costs of any
504 such new generation or energy storage facility or facilities through its rates for generation and distribution
505 services and does not petition and receive approval from the Commission for recovery of such costs
506 through a rate adjustment clause described in clause (ii), the Commission shall, upon the request of the
507 utility in a ~~triennial~~ review proceeding, provide for a customer credit reinvestment offset, as applicable,
508 pursuant to subdivision 8 d with respect to all costs deemed reasonable and prudent by the Commission
509 in a proceeding pursuant to subsection D of § 56-580 or in a ~~triennial~~ review proceeding.

510 Electric distribution grid transformation projects are in the public interest. To the extent that a
511 utility elects to recover the costs of such electric distribution grid transformation projects through its rates
512 for generation and distribution services, and does not petition and receive approval from the Commission
513 for recovery of such costs through a rate adjustment clause described in clause (vi), the Commission shall,
514 upon the request of the utility in a ~~triennial~~ review proceeding, provide for a customer credit reinvestment
515 offset, as applicable, pursuant to subdivision 8 d with respect to all costs deemed reasonable and prudent
516 by the Commission in a proceeding for approval of a plan for electric distribution grid transformation
517 projects pursuant to subdivision 6 or in a ~~triennial~~ review proceeding.

518 Neither generation facilities described in clause (ii) that utilize simple-cycle combustion turbines
519 nor new underground facilities shall receive an enhanced rate of return on common equity as described
520 herein, but instead shall receive the utility's general rate of return during the construction phase of the
521 facility and, thereafter, for the entire service life of the facility. No rate adjustment clause for new
522 underground facilities shall allocate costs to, or provide for the recovery of costs from, customers that are
523 served within the large power service rate class for a Phase I Utility and the large general service rate

524 classes for a Phase II Utility. New underground facilities are hereby declared to be ordinary extensions or
525 improvements in the usual course of business under the provisions of § 56-265.2.

526 As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the
527 facility is fired at least 50 percent by coalbed methane gas, as such term is defined in § 45.2-1600,
528 produced from wells located in the Commonwealth, and (2) "landfill gas powered" if the facility is fired
529 by methane or other combustible gas produced by the anaerobic digestion or decomposition of
530 biodegradable materials in a solid waste management facility licensed by the Waste Management Board.
531 A landfill gas powered facility includes, in addition to the generation facility itself, the equipment used in
532 collecting, drying, treating, and compressing the landfill gas and in transmitting the landfill gas from the
533 solid waste management facility where it is collected to the generation facility where it is combusted.

534 For purposes of this subdivision, "general rate of return" means the fair combined rate of return on
535 common equity as it is determined by the Commission for such utility pursuant to subdivision 2.

536 Notwithstanding any other provision of this subdivision, if the Commission finds during the
537 triennial review conducted for a Phase II Utility in 2021 that such utility has not filed applications for all
538 necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled
539 generation facilities that would add a total capacity of at least 1500 megawatts to the amount of the utility's
540 generating resources as such resources existed on July 1, 2007, or that, if all such approvals have been
541 received, that the utility has not made reasonable and good faith efforts to construct one or more such
542 facilities that will provide such additional total capacity within a reasonable time after obtaining such
543 approvals, then the Commission, if it finds it in the public interest, may reduce on a prospective basis any
544 enhanced rate of return on common equity previously applied to any such facility to no less than the
545 general rate of return for such utility and may apply no less than the utility's general rate of return to any
546 such facility for which the utility seeks approval in the future under this subdivision.

547 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from
548 the Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or
549 demonstration project involving a generation facility utilizing energy from offshore wind, and such utility
550 has not, as of July 1, 2023, commenced construction as defined for federal income tax purposes of an

551 offshore wind generation facility or facilities with a minimum aggregate capacity of 250 megawatts, then
552 the Commission, if it finds it in the public interest, may direct that the costs associated with any such rate
553 adjustment clause involving said test or demonstration project shall thereafter no longer be recovered
554 through a rate adjustment clause pursuant to subdivision 6 and shall instead be recovered through the
555 utility's rates for generation and distribution services, with no change in such rates for generation and
556 distribution services as a result of the combination of such costs with the other costs, revenues, and
557 investments included in the utility's rates for generation and distribution services. Any such costs shall
558 remain combined with the utility's other costs, revenues, and investments included in its rates for
559 generation and distribution services until such costs are fully recovered.

560 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on
561 a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any
562 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
563 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that
564 are related to facilities and projects described in clause (i) of subdivision 6, or that are related to new
565 underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records
566 of the utility until the Commission's final order in the matter, or until the implementation of any applicable
567 approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any
568 costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during
569 the consideration thereof by the Commission, that are proposed for recovery in such petition and that are
570 related to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear
571 power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled
572 facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until
573 the Commission's final order in the matter, or until the implementation of any applicable approved rate
574 adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination of
575 capped rates related to other matters described in subdivision 4, 5, or 6 shall be deferred beginning only
576 upon the expiration or termination of capped rates, provided, however, that no provision of this act shall
577 affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory Commission

578 in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004).
579 A utility shall establish a regulatory asset for regulatory accounting and ratemaking purposes under which
580 it shall defer its operation and maintenance costs incurred in connection with (i) the refueling of any
581 nuclear-powered generating plant and (ii) other work at such plant normally performed during a refueling
582 outage. The utility shall amortize such deferred costs over the refueling cycle, but in no case more than 18
583 months, beginning with the month in which such plant resumes operation after such refueling. The
584 refueling cycle shall be the applicable period of time between planned refueling outages for such plant.
585 As of January 1, 2014, such amortized costs are a component of base rates, recoverable in base rates only
586 ratably over the refueling cycle rather than when such outages occur, and are the only nuclear refueling
587 costs recoverable in base rates. This provision shall apply to any nuclear-powered generating plant
588 refueling outage commencing after December 31, 2013, and the Commission shall treat the deferred and
589 amortized costs of such regulatory asset as part of the utility's costs for the purpose of proceedings
590 conducted (a) with respect to ~~triennial~~ filings under subdivision 3 made on and after July 1, 2014, and (b)
591 pursuant to § 56-245 or the Commission's rules governing utility rate increase applications as provided in
592 subsection B. This provision shall not be deemed to change or reset base rates.

593 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall
594 be entered not more than three months, eight months, and nine months, respectively, after the date of filing
595 of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment
596 clause be applied to customers' bills not more than 60 days after the date of the order, or upon the
597 expiration or termination of capped rates, whichever is later. At any time, the Commission may, in its
598 discretion, for a Phase II Utility, upon petition by a such a utility or upon its own initiated proceeding,
599 direct the consolidation of any one or more subsets of rate adjustment clauses previously implemented
600 pursuant to subdivision 5 or 6 in the interest of judicial economy, customer transparency, or other factors
601 the Commission determines to be appropriate. Any subset of rate adjustment clauses so consolidated shall
602 continue to be considered by the Commission without regard to the other cost, revenues, investments, or
603 earnings of the utility and remain as a cost recovery mechanism independent from the utility's rates for

604 generation and distribution services pursuant to this subdivision and subdivisions 5 and 6, but will be
605 combined as a single rate adjustment clause for cost recovery and review purposes.

606 8. In any ~~triennial~~ review proceeding, for the purposes of reviewing earnings on the utility's rates
607 for generation and distribution services, the following utility generation and distribution costs not
608 proposed for recovery under any other subdivision of this subsection, as recorded per books by the utility
609 for financial reporting purposes and accrued against income, shall be attributed to the test periods under
610 review and deemed fully recovered in the period recorded: costs associated with asset impairments related
611 to early retirement determinations made by the utility for utility generation facilities fueled by coal, natural
612 gas, or oil or for automated meter reading electric distribution service meters; costs associated with
613 projects necessary to comply with state or federal environmental laws, regulations, or judicial or
614 administrative orders relating to coal combustion by-product management that the utility does not petition
615 to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated with severe
616 weather events; and costs associated with natural disasters. Such costs shall be deemed to have been
617 recovered from customers through rates for generation and distribution services in effect during the test
618 periods under review unless such costs, individually or in the aggregate, together with the utility's other
619 costs, revenues, and investments to be recovered through rates for generation and distribution services,
620 result in the utility's earned return on its generation and distribution services for the combined test periods
621 under review to fall more than 50 basis points below the fair combined rate of return authorized under
622 subdivision 2 for such periods or, for any test period commencing after December 31, 2012, for a Phase
623 II Utility and after December 31, 2013, for a Phase I Utility, to fall more than 70 basis points below the
624 fair combined rate of return authorized under subdivision 2 for such periods. In such cases, the
625 Commission shall, in such ~~triennial~~ review proceeding, authorize deferred recovery of such costs and
626 allow the utility to amortize and recover such deferred costs over future periods as determined by the
627 Commission. The aggregate amount of such deferred costs shall not exceed an amount that would, together
628 with the utility's other costs, revenues, and investments to be recovered through rates for generation and
629 distribution services, cause the utility's earned return on its generation and distribution services to exceed
630 the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined test periods

631 under review or, for any test period commencing after December 31, 2012, for a Phase II Utility and after
632 December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under subdivision 2
633 less 70 basis points. Nothing in this section shall limit the Commission's authority, pursuant to the
634 provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of
635 combined test period earnings of the utility in a ~~triennial~~ review, for normalization of nonrecurring test
636 period costs and annualized adjustments for future costs, in determining any appropriate increase or
637 decrease in the utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

638 If the Commission determines as a result of ~~such~~ any triennial review initiated prior to July 1, 2023
639 by a Phase II Utility or at any time by a Phase I Utility, or, for subdivision d, as a result of any triennial or
640 biennial review initiated prior to January 1, 2024 by a Phase II Utility or at any time by a Phase I Utility,
641 that:

642 a. Revenue reductions related to energy efficiency measures or programs approved and deployed
643 since the utility's previous triennial review have caused the utility, as verified by the Commission, during
644 the test period or periods under review, considered as a whole, to earn more than 50 basis points below a
645 fair combined rate of return on its generation and distribution services or, for any test period commencing
646 after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more
647 than 70 basis points below a fair combined rate of return on its generation and distribution services, as
648 determined in subdivision 2, without regard to any return on common equity or other matters determined
649 with respect to facilities described in subdivision 6, the Commission shall order increases to the utility's
650 rates for generation and distribution services necessary to recover such revenue reductions. If the
651 Commission finds, for reasons other than revenue reductions related to energy efficiency measures, that
652 the utility has, during the test period or periods under review, considered as a whole, earned more than 50
653 basis points below a fair combined rate of return on its generation and distribution services or, for any test
654 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
655 Phase I Utility, more than 70 basis points below a fair combined rate of return on its generation and
656 distribution services, as determined in subdivision 2, without regard to any return on common equity or
657 other matters determined with respect to facilities described in subdivision 6, the Commission shall order

658 increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing
659 the utility's services and to earn not less than such fair combined rate of return, using the most recently
660 ended 12-month test period as the basis for determining the amount of the rate increase necessary.
661 However, in the first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility,
662 the Commission may not order a rate increase, and in all triennial reviews of a Phase I or Phase II utility,
663 the Commission may not order such rate increase unless it finds that the resulting rates are necessary to
664 provide the utility with the opportunity to fully recover its costs of providing its services and to earn not
665 less than a fair combined rate of return on both its generation and distribution services, as determined in
666 subdivision 2, without regard to any return on common equity or other matters determined with respect to
667 facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for
668 determining the permissibility of any rate increase under the standards of this sentence, and the amount
669 thereof; and provided that, solely in connection with making its determination concerning the necessity
670 for such a rate increase or the amount thereof, the Commission shall, in any triennial review proceeding
671 conducted prior to July 1, 2028, exclude from this most recently ended 12-month test period any remaining
672 investment levels associated with a prior customer credit reinvestment offset pursuant to subdivision d.

673 b. The utility has, during the test period or test periods under review, considered as a whole, earned
674 more than 50 basis points above a fair combined rate of return on its generation and distribution services
675 or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December
676 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its
677 generation and distribution services, as determined in subdivision 2, without regard to any return on
678 common equity or other matters determined with respect to facilities described in subdivision 6, the
679 Commission shall, subject to the provisions of subdivisions 8 d and 9, direct that 60 percent of the amount
680 of such earnings that were more than 50 basis points, or, for any test period commencing after December
681 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, that 70 percent of the
682 amount of such earnings that were more than 70 basis points, above such fair combined rate of return for
683 the test period or periods under review, considered as a whole, shall be credited to customers' bills. Any
684 such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the

685 Commission, following the effective date of the Commission's order, and shall be allocated among
686 customer classes such that the relationship between the specific customer class rates of return to the overall
687 target rate of return will have the same relationship as the last approved allocation of revenues used to
688 design base rates; or

689 ~~c. In any triennial review proceeding conducted after January 1, 2020, for a Phase I Utility or after~~
690 ~~January 1, 2021, for a Phase II Utility in which the~~ The utility has, during the test period or test periods
691 under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return
692 on its generation and distribution services or, for any test period commencing after December 31, 2012,
693 for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above
694 a fair combined rate of return on its generation and distribution services, as determined in subdivision 2,
695 without regard to any return on common equity or other matter determined with respect to facilities
696 described in subdivision 6, and the combined aggregate level of capital investment that the Commission
697 has approved other than those capital investments that the Commission has approved for recovery pursuant
698 to a rate adjustment clause pursuant to subdivision 6 made by the utility during the test periods under
699 review in that triennial review proceeding in new utility-owned generation facilities utilizing energy
700 derived from sunlight, or from wind, and in electric distribution grid transformation projects, as
701 determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of the earnings that are more
702 than 70 basis points above the utility's fair combined rate of return on its generation and distribution
703 services for the combined test periods under review in that triennial review proceeding, the Commission
704 shall, subject to the provisions of subdivision 9 and in addition to the actions authorized in subdivision b,
705 also order reductions to the utility's rates it finds appropriate. However, in the first triennial review
706 proceeding conducted after January 1, 2021, for a Phase II Utility, any reduction to the utility's rates
707 ordered by the Commission pursuant to this subdivision shall not exceed \$50 million in annual revenues,
708 with any reduction allocated to the utility's rates for generation services, and in each triennial review of a
709 Phase I or Phase II Utility, the Commission may not order such rate reduction unless it finds that the
710 resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services
711 and to earn not less than a fair combined rate of return on its generation and distribution services, as

712 determined in subdivision 2, without regard to any return on common equity or other matters determined
713 with respect to facilities described in subdivision 6, using the most recently ended 12-month test period
714 as the basis for determining the permissibility of any rate reduction under the standards of this sentence,
715 and the amount thereof; and

716 d. (Expires July 1, 2028) In any ~~triennial~~ review proceeding conducted after December 31, 2017,
717 upon the request of the utility, the Commission shall determine, prior to directing that 70 percent of
718 earnings that are more than 70 basis points above the utility's fair combined rate of return on its generation
719 and distribution services for the test period or periods under review be credited to customer bills pursuant
720 to subdivision 8 b, the aggregate level of prior capital investment that the Commission has approved other
721 than those capital investments that the Commission has approved for recovery pursuant to a rate
722 adjustment clause pursuant to subdivision 6 made by the utility during the test period or periods under
723 review in both (i) new utility-owned generation facilities utilizing energy derived from sunlight, or from
724 onshore or offshore wind, and (ii) electric distribution grid transformation projects, as determined by the
725 utility's plant in service and construction work in progress balances related to such investments as recorded
726 per books by the utility for financial reporting purposes as of the end of the most recent test period under
727 review. Any such combined capital investment amounts shall offset any customer bill credit amounts, on
728 a dollar for dollar basis, up to the aggregate level of invested or committed capital under clauses (i) and
729 (ii). The aggregate level of qualifying invested or committed capital under clauses (i) and (ii) is referred
730 to in this subdivision as the customer credit reinvestment offset, which offsets the customer bill credit
731 amount that the utility has invested or will invest in new solar or wind generation facilities or electric
732 distribution grid transformation projects for the benefit of customers, in amounts up to 100 percent of
733 earnings that are more than 70 basis points above the utility's fair rate of return on its generation and
734 distribution services, and thereby reduce or eliminate otherwise incremental rate adjustment clause
735 charges and increases to customer bills, which is deemed to be in the public interest. If 100 percent of the
736 amount of earnings that are more than 70 basis points above the utility's fair combined rate of return on
737 its generation and distribution services, as determined in subdivision 2, exceeds the aggregate level of
738 invested capital in new utility-owned generation facilities utilizing energy derived from sunlight, or from

739 wind, and electric distribution grid transformation projects, as provided in clauses (i) and (ii), during the
740 test period or periods under review, then 70 percent of the amount of such excess shall be credited to
741 customer bills as provided in subdivision 8 b in connection with the ~~triennial~~ review proceeding. The
742 portion of any costs associated with new utility-owned generation facilities utilizing energy derived from
743 sunlight, or from wind, or electric distribution grid transformation projects that is the subject of any
744 customer credit reinvestment offset pursuant to this subdivision shall not thereafter be recovered through
745 the utility's rates for generation and distribution services over the service life of such facilities and shall
746 not thereafter be included in the utility's costs, revenues, and investments in future ~~triennial~~ review
747 proceedings conducted pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause
748 petition pursuant to subdivision 6. The portion of any costs associated with new utility-owned generation
749 facilities utilizing energy derived from sunlight, or from wind, or electric distribution grid transformation
750 projects that is not the subject of any customer credit reinvestment offset pursuant to this subdivision may
751 be recovered through the utility's rates for generation and distribution services over the service life of such
752 facilities and shall be included in the utility's costs, revenues, and investments in future ~~triennial~~ review
753 proceedings conducted pursuant to subdivision 2 until such costs are fully recovered, and if such costs are
754 recovered through the utility's rates for generation and distribution services, they shall not be the subject
755 of a rate adjustment clause petition pursuant to subdivision 6. Only the portion of such costs of new utility-
756 owned generation facilities utilizing energy derived from sunlight, or from wind, or electric distribution
757 grid transformation projects that has not been included in any customer credit reinvestment offset pursuant
758 to this subdivision, and not otherwise recovered through the utility's rates for generation and distribution
759 services, may be the subject of a rate adjustment clause petition by the utility pursuant to subdivision 6.

760 The Commission's final order regarding such ~~triennial~~ review shall be entered not more than eight
761 months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more
762 than 60 days after the date of the order. The fair combined rate of return on common equity determined
763 pursuant to subdivision 2 in such ~~triennial~~ review shall apply, for purposes of reviewing the utility's
764 earnings on its rates for generation and distribution services, to the entire two or three, as applicable,
765 successive 12-month test periods ending December 31 immediately preceding the year of the utility's

766 subsequent ~~triennial~~ review filing under subdivision 3 and shall apply to applicable rate adjustment clauses
767 under subdivisions 5 and 6 prospectively from the date the Commission's final order in the ~~triennial~~ review
768 proceeding, utilizing rate adjustment clause true-up protocols as the Commission in its discretion may
769 determine.

770 9. In any biennial review:

771 a. If the Commission determines that the utility has during the test period or test periods under
772 review, considered as a whole, earned more than 70 basis points above a fair combined rate of return on
773 its generation and distribution services previously authorized by the Commission, as determined in
774 subdivision 2, without regard to any return on common equity or other matters determined with respect to
775 facilities described in subdivision 6, which have not been combined with the utility's costs, revenues, and
776 investments for generation and distribution services, the Commission shall, subject to the provisions of
777 subdivision 8 d, direct that 70 percent of the amount of such earnings that were more than 70 basis points
778 above such fair combined rate of return for the test period or periods under review, considered as a whole,
779 be credited to customers' bills. Any such credits shall be amortized over a period of six to 12 months, as
780 determined at the discretion of the Commission, following the effective date of the Commission's order,
781 and shall be allocated among customer classes such that the relationship between the specific customer
782 class rates of return to the overall target rate of return will have the same relationship as the last approved
783 allocation of revenues used to design base rates.

784 b. The Commission shall order prospective increases or reductions to the utility's rates for
785 generation or distribution services as it determines, in its discretion, to be appropriate, in order to ensure
786 that the utility's rates for generation and distribution services (i) are just and reasonable and (ii) provide
787 the utility an opportunity to fully recover its costs of providing such services over the rate period ending
788 on December 31 of the year of the utility's succeeding biennial review and to earn not less than a fair
789 combined rate of return on its generation and distribution services, as determined in subdivision 2, without
790 regard to any return on common equity or other matters determined with respect to facilities described in
791 subdivision 6, which have not been combined with the utility's costs, revenues, and investments for
792 generation and distribution services, using the most recently ended 12-month test period, along with

793 normalization of nonrecurring test period costs and annualized adjustments for future costs as the basis
794 for determining the appropriateness of any rate adjustment. In its biennial review filing, the utility shall
795 separately project future costs over each 12-month period ending on December 31 of the year of the
796 utility's succeeding biennial review. The Commission may, to the extent it finds such action aligns with
797 the utility's projected cost of service, direct that any increase or reduction in the utility's rates for generation
798 or distribution services be implemented on a staggered basis at the commencement and mid-point of the
799 succeeding rate period.

800 10. If, as a result of a triennial review required under this subsection and conducted with respect
801 to any test period or periods under review ending later than December 31, 2010 (or, if the Commission
802 has elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending
803 later than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the
804 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility
805 has, during the test period or periods under review, considered as a whole, earned more than 50 basis
806 points above a fair combined rate of return on its generation and distribution services or, for any test period
807 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I
808 Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution
809 services, as determined in subdivision 2, without regard to any return on common equity or other matters
810 determined with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated rates
811 of such utility at the end of the most recently ended 12-month test period exceeded the annual increases
812 in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as
813 published by the Bureau of Labor Statistics of the United States Department of Labor, compounded
814 annually, when compared to the total aggregate regulated rates of such utility as determined pursuant to
815 the review conducted for the base period, the Commission shall, unless it finds that such action is not in
816 the public interest or that the provisions of subdivisions 8 b and c are more consistent with the public
817 interest, direct that any or all earnings for such test period or periods under review, considered as a whole
818 that were more than 50 basis points, or, for any test period commencing after December 31, 2012, for a
819 Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points, above such

820 fair combined rate of return shall be credited to customers' bills, in lieu of the provisions of subdivisions
821 8 b and c, provided that no credits shall be provided pursuant to this subdivision in connection with any
822 triennial review unless such bill credits would be payable pursuant to the provisions of subdivision 8 d,
823 and any credits under this subdivision shall be calculated net of any customer credit reinvestment offset
824 amounts under subdivision 8 d. Any such credits shall be amortized and allocated among customer classes
825 in the manner provided by subdivision 8 b. For purposes of this subdivision:

826 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has
827 elected to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending
828 December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most
829 recent test period with respect to which credits have been applied to customers' bills under the provisions
830 of this subdivision, whichever is later.

831 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6,
832 except for any increases in fuel tariffs deferred by the Commission for recovery in periods after December
833 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
834 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8
835 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase
836 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of
837 July 1, 2009.

838 ~~10-11.~~ For purposes of this section, the Commission shall regulate the rates, terms and conditions
839 of any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital
840 structure and cost of capital of such utility, excluding any debt associated with securitized bonds that are
841 the obligation of non-Virginia jurisdictional customers, unless the Commission finds that the debt to equity
842 ratio of such capital structure is unreasonable for such utility, in which case the Commission may utilize
843 a debt to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment
844 pursuant to subdivisions 8 a and c, and without regard to the cost of capital, capital structure, revenues,
845 expenses or investments of any other entity with which such utility may be affiliated. In particular, and
846 without limitation, the Commission shall determine the federal and state income tax costs for any such

847 utility that is part of a publicly traded, consolidated group as follows: (i) such utility's apportioned state
848 income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed
849 a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated
850 according to the applicable federal income tax rate and shall exclude any consolidated tax liability or
851 benefit adjustments originating from any taxable income or loss of its affiliates.

852 Throughout the duration of the construction period for any project constructed by a Phase II Utility
853 pursuant to § 56-585.1:11, such utility shall undertake reasonable efforts to maintain, subject to audit by
854 the Commission, its common equity capitalization to total capitalization ratio at a level at least equal to
855 the average of such ratio for all utilities in the applicable Phase II Utility's peer group investor-owned
856 utilities, as determined according to subdivision A 2 b, and as authorized by such utilities' regulatory
857 commission in their most recent governing rate proceeding.

858 B. Nothing in this section shall preclude an investor-owned incumbent electric utility from
859 applying for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate
860 increase applications; however, in any such filing, a fair rate of return on common equity shall be
861 determined pursuant to subdivision A 2. Nothing in this section shall preclude such utility's recovery of
862 fuel and purchased power costs as provided in § 56-249.6.

863 C. Except as otherwise provided in this section, the Commission shall exercise authority over the
864 rates, terms and conditions of investor-owned incumbent electric utilities for the provision of generation,
865 transmission and distribution services to retail customers in the Commonwealth pursuant to the provisions
866 of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2.

867 D. The Commission may determine, during any proceeding authorized or required by this section,
868 the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection
869 with the subject of the proceeding. A determination of the Commission regarding the reasonableness or
870 prudence of any such cost shall be consistent with the Commission's authority to determine the
871 reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et
872 seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its
873 customers from renewable energy resources, the Commission shall consider the extent to which such

874 renewable energy resources, whether utility-owned or by contract, further the objectives of the
875 Commonwealth Clean Energy Policy set forth in § 45.2-1706.1, and shall also consider whether the costs
876 of such resources is likely to result in unreasonable increases in rates paid by customers.

877 E. Notwithstanding any other provision of law, the Commission shall determine the amortization
878 period for recovery of any appropriate costs due to the early retirement of any electric generation facilities
879 owned or operated by any Phase I Utility or Phase II Utility. In making such determination, the
880 Commission shall (i) perform an independent analysis of the remaining undepreciated capital costs; (ii)
881 establish a recovery period that best serves ratepayers; and (iii) allow for the recovery of any carrying
882 costs that the Commission deems appropriate.

883 F. Except as provided in any other provision of law and except for early retirement determinations
884 identified by the utility in an integrated resource plan filed with the Commission pursuant to § 56-599 by
885 July 1, 2023, an investor-owned incumbent electric utility shall not permanently retire an electric power
886 generation facility from service between July 1, 2023 and December 31, 2045, without first obtaining the
887 approval of the Commission, upon petition from such investor-owned incumbent electric utility, and a
888 finding by the Commission that the retirement determination, after consideration of the impact of the
889 proposed retirement on reliability or security of electric service to customers, is reasonable and prudent.
890 Any such petition shall be filed by the utility no later than 12 months prior to the proposed retirement date.
891 The Commission shall include in its report required by subsection B of § 56-596 any information
892 concerning the impacts of generation unit retirement determinations by a Phase I or Phase II Utility,
893 utilizing information from the respective utility's integrated resource plan.

894 G. The Commission shall promulgate such rules and regulations as may be necessary to implement
895 the provisions of this section.

896 **§ 56-585.1:4. Development of solar and wind generation and energy storage capacity in the**
897 **Commonwealth.**

898 A. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar
899 or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic shoreline,
900 each having a rated capacity of at least one megawatt and having in the aggregate a rated capacity that

901 does not exceed 5,000 megawatts, or (ii) the purchase by a public utility of energy, capacity, and
902 environmental attributes from solar facilities described in clause (i) owned by persons other than a public
903 utility is in the public interest, and the Commission shall so find if required to make a finding regarding
904 whether such construction or purchase is in the public interest.

905 B. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar
906 or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic shoreline,
907 each having a rated capacity of less than one megawatt, including rooftop solar installations with a
908 capacity of not less than 50 kilowatts, and having in the aggregate a rated capacity that does not exceed
909 500 megawatts, or (ii) the purchase by a public utility of energy, capacity, and environmental attributes
910 from solar facilities described in clause (i) owned by persons other than a public utility is in the public
911 interest, and the Commission shall so find if required to make a finding regarding whether such
912 construction or purchase is in the public interest.

913 C. The aggregate cap of 5,000 megawatts of rated capacity described in clause (i) of subsection A,
914 the aggregate cap of 500 megawatts of rated capacity described in clause (i) of subsection B, and the
915 aggregate cap of 200 megawatts of rated capacity described in subsection I are separate and independent
916 from each other. The capacity of facilities in subsection B shall not be counted in determining the capacity
917 of facilities in subsection A or I; the capacity of facilities in subsection A shall not be counted in
918 determining the capacity of facilities in subsection B or I; and the capacity of facilities in subsection I
919 shall not be counted in determining the capacity of facilities in subsection A or B.

920 D. Twenty-five percent of the solar generation capacity placed in service on or after July 1, 2018,
921 located in the Commonwealth, and found to be in the public interest pursuant to subsection A or B shall
922 be from the purchase by a public utility of energy, capacity, and environmental attributes from solar
923 facilities owned by persons other than a public utility. The remainder shall be construction or purchase by
924 a public utility of one or more solar generation facilities located in the Commonwealth. All of the solar
925 generation capacity located in the Commonwealth and found to be in the public interest pursuant to
926 subsection A or B shall be subject to competitive procurement, provided that a public utility may select
927 solar generation capacity without regard to whether such selection satisfies price criteria if the selection

928 of the solar generating capacity materially advances non-price criteria, including favoring geographic
929 distribution of generating capacity, areas of higher employment, or regional economic development, if
930 such non-price solar generating capacity selected does not exceed 25 percent of the utility's solar
931 generating capacity.

932 E. Construction, purchasing, or leasing activities for a test or demonstration project for a new
933 utility-owned and utility-operated generating facility or facilities utilizing energy derived from offshore
934 wind with an aggregate capacity of not more than 16 megawatts are in the public interest.

935 F. Prior to January 1, 2035, (i) the construction by a public utility of one or more energy storage
936 facilities located in the Commonwealth, having in the aggregate a rated capacity that does not exceed
937 2,700 megawatts, or (ii) the purchase by a public utility of energy storage facilities described in clause (i)
938 owned by persons other than a public utility or the capacity from such facilities is in the public interest,
939 and the Commission shall so find if required to make a finding regarding whether such construction or
940 purchase is in the public interest.

941 G. At least 35 percent of the energy storage capacity placed in service on or after July 1, 2020,
942 located in the Commonwealth and found to be in the public interest pursuant to subsection F shall be from
943 the purchase by a public utility of energy storage facilities owned by persons other than a public utility or
944 the capacity from such facilities. All of the energy storage facilities located in the Commonwealth and
945 found to be in the public interest pursuant to subsection F shall be subject to competitive procurement,
946 provided that a public utility may select energy storage facilities without regard to whether such selection
947 satisfies price criteria if the selection of the energy storage facilities materially advances non-price criteria,
948 including favoring geographic distribution of generating facilities, areas of higher employment, or
949 regional economic development, if such energy storage facilities selected for the advancement of non-
950 price criteria do not exceed 25 percent of the utility's energy storage capacity.

951 H. A utility may elect to petition the Commission, outside of a triennial or biennial review
952 proceeding conducted pursuant to § 56-585.1, at any time for a prudency determination with respect to
953 the construction or purchase by the utility of one or more solar or wind generation facilities located in the
954 Commonwealth or off the Commonwealth's Atlantic Shoreline or the purchase by the utility of energy,

955 capacity, and environmental attributes from solar or wind facilities owned by persons other than the utility.
956 The Commission's final order regarding any such petition shall be entered by the Commission not more
957 than three months after the date of the filing of such petition.

958 I. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar
959 or wind generation facilities located on a previously developed project site in the Commonwealth having
960 in the aggregate a rated capacity that does not exceed 200 megawatts or (ii) the purchase by a public utility
961 of energy, capacity, and environmental attributes from solar facilities described in clause (i) owned by
962 persons other than a public utility, is in the public interest.

963 **§ 56-599. Integrated resource plan required.**

964 A. Each electric utility shall file an updated integrated resource plan by July 1, 2015. Thereafter,
965 each electric utility shall file an updated integrated resource plan by May 1, in each year immediately
966 preceding the year the utility is subject to a triennial or biennial review filing. A copy of each integrated
967 resource plan shall be provided to the Chairman of the House Committee on Labor and Commerce, the
968 Chairman of the Senate Committee on Commerce and Labor, and to the Chairman of the Commission on
969 Electric Utility Regulation. All updated integrated resource plans shall comply with the provisions of any
970 relevant order of the Commission establishing guidelines for the format and contents of updated and
971 revised integrated resource plans. Each integrated resource plan shall consider options for maintaining
972 and enhancing rate stability, energy independence, economic development including retention and
973 expansion of energy-intensive industries, and service reliability.

974 B. In preparing an integrated resource plan, each electric utility shall systematically evaluate and
975 may propose:

- 976 1. Entering into short-term and long-term electric power purchase contracts;
- 977 2. Owning and operating electric power generation facilities;
- 978 3. Building new generation facilities;
- 979 4. Relying on purchases from the short term or spot markets;
- 980 5. Making investments in demand-side resources, including energy efficiency and demand-side
981 management services;

982 6. Taking such other actions, as the Commission may approve, to diversify its generation supply
983 portfolio and ensure that the electric utility is able to implement an approved plan;

984 7. The methods by which the electric utility proposes to acquire the supply and demand resources
985 identified in its proposed integrated resource plan;

986 8. The effect of current and pending state and federal environmental regulations upon the continued
987 operation of existing electric generation facilities or options for construction of new electric generation
988 facilities;

989 9. The most cost effective means of complying with current and pending state and federal
990 environmental regulations, including compliance options to minimize effects on customer rates of such
991 regulations;

992 10. Long-term electric distribution grid planning and proposed electric distribution grid
993 transformation projects;

994 11. Developing a long-term plan for energy efficiency measures to accomplish policy goals of
995 reduction in customer bills, particularly for low-income, elderly, and disabled customers; reduction in
996 emissions; and reduction in carbon intensity; and

997 12. Developing a long-term plan to integrate new energy storage facilities into existing generation
998 and distribution assets to assist with grid transformation.

999 C. As part of preparing any integrated resource plan pursuant to this section, each utility shall
1000 conduct a facility retirement study for owned facilities located in the Commonwealth that emit carbon
1001 dioxide as a byproduct of combusting fuel and shall include the study results in its integrated resource
1002 plan. Upon filing the integrated resource plan with the Commission, the utility shall contemporaneously
1003 disclose the study results to each planning district commission, county board of supervisors, and city and
1004 town council where such electric generation unit is located, the Department of Energy, the Department of
1005 Housing and Community Development, the Virginia Employment Commission, and the Virginia Council
1006 on Environmental Justice. The disclosure shall include (i) the driving factors of the decision to retire and
1007 (ii) the anticipated retirement year of any electric generation unit included in the plan. Any electric

1008 generating facility with an anticipated retirement date that meets the criteria of § 45.2-1701.1 shall comply
1009 with the public disclosure requirements therein.

1010 D. The Commission shall analyze and review an integrated resource plan and, after giving notice
1011 and opportunity to be heard, the Commission shall make a determination within nine months after the date
1012 of filing as to whether such an integrated resource plan is reasonable and is in the public interest.

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